

46 Am. Jur. 2d Judges § 166

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Judges

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IX. Disqualification to Act in Particular Case

C. Remedies and Procedure

1. In General

§ 166. Who may move to disqualify judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(1)

Generally, any party to a suit may assert that a judge is disqualified to sit.¹

Relators have a real and actual interest in removing the curator of an interdicted adult, and thus, for purposes of a petition to remove the curator, are parties who may seek recusal.²

When the focus of criminal proceedings turns from guilt to the defendant's failure to appear, the surety becomes a party within the meaning of a statute entitling a party to seek recusal.³

All parties on one side constitute one party for purposes of a statute permitting only one application for disqualification and thus together may file only one application⁴ unless a party is in default, is merely a nominal party, or is absent.⁵ Pursuant to other statutory authority, a party seeking recusal must show that it is not a party united in interest and pleading together with another party that has already requested recusal or has waived its right to do so.⁶ Parties are not united in interest where they have directly adverse interests in the case.⁷

The state may raise the question of the disqualification of a judge in a criminal case, in the absence of any provision to the contrary,⁸ and the prosecutor may file an affidavit of prejudice.⁹ When a conviction is reversed and a new trial ordered, either party may move for a change of judge.¹⁰

Footnotes

- 1 Romero v. Felter, 1972-NMSC-032, 83 N.M. 736, 497 P.2d 738 (1972).
As to who may move to disqualify in federal court, see Am. Jur. 2d, Federal Courts § 44.
- 2 In re Interdiction of Greenblatt, 860 So. 2d 533 (La. 2003).
- 3 State v. French, 88 Wash. App. 586, 945 P.2d 752 (Div. 2 1997).
- 4 LaMon v. Butler, 112 Wash. 2d 193, 770 P.2d 1027 (1989).
- 5 Muller v. Muller, 235 Cal. App. 2d 341, 45 Cal. Rptr. 182 (1st Dist. 1965); In re Greybull Valley Irr. Dist., 52 Wyo. 479, 77 P.2d 617 (1938).
- 6 DeWitt Ross & Stevens, S.C. v. Galaxy Gaming and Racing Ltd. Partnership, 2003 WI App 190, 267 Wis. 2d 233, 670 N.W.2d 74 (Ct. App. 2003), decision aff'd in part on other grounds, rev'd in part on other grounds, 2004 WI 92, 273 Wis. 2d 577, 682 N.W.2d 839 (2004).
As to waiver and estoppel of disqualification claim, see §§ 198 to 208.
- 7 State ex rel. Cincinnati Ins. Co. v. Circuit Court for Milwaukee County, 2003 WI 57, 262 Wis. 2d 99, 663 N.W.2d 275 (2003).
- 8 State v. Kraska, 294 Minn. 540, 201 N.W.2d 742, 68 A.L.R.3d 505 (1972).
- 9 State v. Franulovich, 89 Wash. 2d 521, 573 P.2d 1298 (1978).
- 10 Garland v. State, 788 N.E.2d 425 (Ind. 2003).

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